Appendix.

The following facts are established by the record herein:

The contract sued upon herein is a "Reinsurance Agreement" between two life insurance companies designated as "Insurer" and "Re-insurer" for the stated purpose of effecting reinsurance of policies (R. 36). Its terminology throughout is that of *reinsurance* (R. 36-38). It expressly gives policyholders the right of direct suit against defendant (Par. 7). Insurance officials of Ohio and Illinois found that it conserved the rights of policyholders (R. 532-4). It was intended for the primary benefit of life insurance policyholders, and its object was the reinsurance of such policies (R. 609, 641-3).

Plaintiffs were depositors of the Roseland State Savings Bank (R. 3) and no claim is made that they were policyholders of the American Old Line. They were not parties to the Reinsurance Agreement, and neither they nor the alleged stockholders' liability of the American Old Line was referred to therein. Unlike policyholders, they were not given any direct action against defendant, and were not referred to in the approvals by the insurance departments of Ohio and Illinois.

That no one other than policyholders was intended to be benefited or to have a right to sue on the Reinsurance Agreement appears from the contract itself and the undisputed testimony of the negotiating agents of both parties to the agreement (R. 641-3). The Reinsurance Agreement was negotiated by Harold W. Kingery, President of the American Old Line Insurance Company, and by John H. Evans, actuary of The Ohio National Life Insurance Company (R. 229, 283, 321).

At the outset of the negotiations, Kingery told Evans that he wanted to sell the American Old Line or the stock thereof, but Evans said that he was not interested in that kind of a deal, but that he would consider entering into a *reinsurance* contract (R. 321-3, 229, 226). Kingery explained that the American Old Line would not be interested in selling its bank stocks, because they were considered to be very valuable, and because the stockholders of the American Old Line had borrowed from the banks involved and desired to retain the bank stock to protect their personal transactions (R. 321-2, 332, 230-1). That decision presented no difficulty, as the defendant could not legally acquire bank stocks (R. 230-1; Ohio Gen. Code, §§ 9357, 9358).

Since the American Old Line was to retain the bank stocks, Evans was not interested therein, paid no attention thereto, and made no investigation thereof (R. 231, 289, 291, 296). The attitude of Kingery was the same (R. 232-25). While Evans knew that the American Old Line owned some bank stock, he did not know what banks were involved and never heard of the Roseland Bank (R. 291, 289, 297).

The subject of stockholders' liability was not discussed or considered in those negotiations. Neither Evans nor Kingery knew of the existence of any such liability, and the subject never entered their minds (R. 249, 323-24, 289). Kingery testified that it was his understanding of the transaction and the Reinsurance Agreement that the defendant would not assume any stockholders' liability, and that if such a liability existed, it remained a liability of the American Old Line (R. 324-5, 331). This testimony was uncontradicted and shows a clear intention of the contracting parties that the defendant was not to assume payment of the claims asserted by plaintiffs herein.

That the subject of stockholders' liability of the American Old Line to plaintiffs was not considered by the parties is further indicated by the fact that, at that time, the Roseland State Savings Bank was open and paying dividends to its stockholders (R. 582). At that time the accounts of several of the plaintiffs had not yet been opened (R. 403-412) and the bank was paying all demands of its depositors (R. 11).